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No. 89-1756

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

ROYAL CROWN COLA CO.,
Petitioner,
v.
THE COCA-COLA COMPANY, DR PEPPER CO.,
and PEPSICO, INC.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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QUESTION PRESENTED

Whether an antitrust plaintiff who fails to obtain either a ruling on the merits or a favorable settlement, and who fails to submit evidence showing that its lawsuit was a substantial factor or catalyst for defendants' voluntary change of behavior, is nonetheless entitled to recover attorney's fees as a substantially prevailing party under Section 16 of the Clayton Act, 15 U.S.C. § 26.

RULE 29.1 STATEMENT

Respondent PepsiCo, Inc. has an ownership interest, excluding one hundred percent ownership, in each of the following companies: ALPAC Corporation; American Business Computer Corp.; Arnott's Snack Foods; Beijing Pepsi-Cola Beverage Company Ltd.; Blanchard, S.A.; Britvic Holdings Limited; Cal-Pepsi, Inc.; Channel Island Beverage Co., Inc.; Chia Tai-KFC Investment Co. Ltd.; Chicago & Rush; CP-KFC Development Company (Thailand) Limited; Delta Beverage Group, Inc.; Equipos y Deportes Exclusivos, S.A. de C.V.; Guangzhou Flavours Development Corp.; Guangzhou Hua Chang Toy Co. Ltd.; International Process Foods; Kentucky Fried Chicken Beijing Limited; Kentucky Fried Chicken Espana, S.A.; Kentucky Fried Chicken (Great Britain) Limited; Kentucky Fried Chicken Japan Ltd.; Kentucky Fried Chicken Management Pte. Ltd.; Kentucky S.A. S.A.; Lindsey Bottling Company, Inc.; Lindsey Holding Company, Inc.; Orion Frito-Lay Corporation; PAI S.p.A.; Penn-Chesapeake Associates, Inc.; PepsiCo (U.K.) Pension Trust Limited; Pepsi-Cola Allied Bottlers, Inc.; Pepsi-Cola Bottling Co. of Bend; Pepsi-Cola Bottling of Northern California; Pepsi-Cola Bottling of Roseburg; Pepsi-Cola General Bottlers, Inc.; Pizza Hut G.m.b.H.; Pizza Hut G.m.b.H. & Co. K.G.; Pizza Hut Management, Inc.; Pizza Hut Restauration G.m.b.H.; Pizza Hut S.N.C.; Pizza Hut del Distrito, S.A. de C.V.; Pizza Hut (U.K.) Limited; Presco Corporation; President Enterprises; Serm Suk Co. Ltd.; Seven-Up Andino S.A.; Shanghai Kentucky Fried Chicken Co. Ltd.; Shanghai McCormick Seasoning & Foodstuffs Company; Siam Snack Company, Ltd.; Sportmex Internacional S.A. de C.V.; Taiwan Pepsi-Cola, Inc. Bottling Company; The Hostess-Frito-Lay Company; Uzay Gida Sanayive Picaret A.S.; Willamette Beverage Co.; Bebidas Purificadas del Norte, S.A.; Corina Snacks; Laurel Packaging, Inc.

Respondent The Coca-Cola Company has an ownership interest, excluding one hundred percent ownership, in

each of the following domestic and Canadian companies: The Coca-Cola Bottling Company of New York, Inc.; Brucephil, Inc.; Coca-Cola Bottling Company Consolidated; Coca-Cola Enterprises, Inc.; Johnston Coca-Cola Bottling Group, Inc.; T.C.C. Beverages Ltd.; Sunbelt Coca-Cola Bottling Company, Inc.; Rutgers Minority Investment Company; Dallas Minority Enterprise Small Business Investment Corporation; Albev Trading, Inc.; China Ventures, L.P.

Respondent Dr Pepper Company: Dr Pepper/Seven-Up Companies, Inc.; The Seven-Up Company.

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A30) is reported at 887 F.2d 1480. The opinion of the district court on entitlement (Pet. App. A31-A38) is not reported; the district court's opinion on valuation (Pet. App. A39-A53) is reported at 678 F. Supp. 875.

JURISDICTION

The judgment of the court of appeals was entered on November 13, 1989. A petition for rehearing was denied

on February 10, 1990 (Pet. App. A54-A55). The petition for a writ of certiorari was filed on May 10, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

1. In January 1986, PepsiCo, Inc. announced that it planned to acquire the soft drink franchise business of the Seven-Up Company. One month later, The Coca-Cola Company announced that it planned to acquire the Dr Pepper Company (Pet. App. A3). The premerger waiting periods under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, as extended at the request of the Federal Trade Commission (FTC), prevented consummation of either proposed transaction until midnight on June 24, 1986 (Pet. App. A3-A4). During this period, the FTC conducted extensive investigations of the proposed transactions, which required the principals to produce millions of pages of documents and thousands of pages of interrogatory answers in response to the FTC's requests for additional information and documents. The FTC also took investigational depositions of dozens of executives of the parties to the proposed transactions as well as of third parties.

At about 5 p.m. on Friday, June 20, 1986, the FTC voted (4-0, with one Commissioner recused) to oppose both proposed transactions and directed the FTC staff to file a complaint for a preliminary injunction pursuant to 15 U.S.C. § 53(b). On Monday, June 23, 1986, the PepsiCo/Seven-Up transaction was voluntarily abandoned in response to the Commission's vote.[1]

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[1] Corporate acquisitions are ordinarily time-sensitive and that was particularly true of the proposed sale of Seven-Up. When the PepsiCo/Seven-Up agreement was made, Seven-Up's competitive and financial positions were so weak that its future existence was threatened. For this reason, Seven-Up's parent company obtained the contractual right to cancel the agreement if the transaction did not close by June 1, 1986. Between January and June 1986, Seven-

Also on June 23, the FTC filed suit in the United States District Court for the District of Columbia, seeking to block the proposed Coca-Cola/Dr Pepper acquisition. At a hearing on June 24, the parties agreed that Coca-Cola would not consummate the transaction until after the court ruled on the FTC's application for a preliminary injunction. Pet. App. A4-A5. On July 31, 1986, the district court in Washington granted the FTC's motion for a preliminary injunction. On August 5, 1986, Coca-Cola and Dr Pepper announced that they had abandoned the proposed acquisition (*id.* at A5).

2. During the extended Hart-Scott-Rodino waiting period, petitioner Royal Crown Cola Co., a competitor in the soft drink industry, attacked the proposed acquisitions. Royal Crown's efforts included intensive lobbying at the Commission "urg[ing] the FTC to act" (Pet. App. A24); Royal Crown also lobbied Congress and issued press releases criticizing the transactions (*id.* at A49). Although it claimed to be in a state of " 'trial readiness' for some four or five months," Royal Crown elected to postpone litigation in favor of pursuing its lobbying campaign against the proposed acquisitions (*id.* at A23).

Royal Crown did not file the present lawsuit in the United States District Court for the Middle District of Georgia until June 19, 1986, some five months after the PepsiCo/Seven-Up transaction was announced, and on the eve of the publicly-announced FTC vote scheduled for the following afternoon. Royal Crown sought to enjoin both transactions, contending that they would violate Section 7 of the Clayton Act, 15 U.S.C. § 18.

Royal Crown also moved for entry of a temporary restraining order (TRO). On Friday, June 20, 1986—the

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Up's financial position continued to decline (R2-62-Exh. 1). "R." refers to the record in the courts below.

The Coca-Cola/Dr Pepper contract had a comparable provision, permitting either party to terminate the agreement if the transaction did not close by August 29, 1986 (R2-63-Exh. B ¶ 4).

day of the FTC vote—the district court in Georgia heard arguments from counsel and entered a TRO "just for the purpose of maintaining the status quo until the Court can look into the matter in some depth" (R4-22-75). The court expressly stated that the TRO did not constitute a disposition on any substantive issue in the case (*id.*).

Following the announcement that the PepsiCo/Seven-Up transaction had been abandoned, the district court on June 26, dismissed Royal Crown's complaint and vacated the TRO as to all parties to that proposed transaction (R2-21). On August 25, 1986, following the announcement that the Coca-Cola/Dr Pepper transaction has been abandoned, the district court dismissed Royal Crown's complaint against Coca-Cola and Dr Pepper, the only defendants then remaining in the case, and vacated all provisional orders directed against those defendants (R2-60).

3. Although it had not obtained any substantive relief or interlocutory ruling on the merits against any defendant, or even a settlement, Royal Crown moved to recover its costs of suit, including attorney's fees, under Section 16 of the Clayton Act, 15 U.S.C. § 26. Royal Crown sought a total of $1,733,879 as reimbursement for its costs in hiring three law firms in connection with this matter and the various extrajudicial efforts in which counsel had engaged (R3-100-3). Royal Crown submitted no evidence to show that its lawsuit was causally connected to the abandonment of the transactions, nor did it request an evidentiary hearing. The only evidence on the issue of causation consisted of affidavits and documents submitted by respondents showing that the decisions to terminate the transactions were made solely in response to the FTC's determinations and were not influenced by Royal Crown's litigation. *See* R2-63-Exhs. A, B; R2-62-Exhs. 1-3.[2]

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[2] As the court of appeals commented, Royal Crown "did not attempt to depose, cross-examine or impeach any officers, directors or attor-

The district court ruled that even though the case had become moot, "making an ultimate determination on the merits unnecessary" (Pet. App. A31), Royal Crown was entitled to recover attorney's fees simply because "the proposed acquisitions were moving forward toward imminent consummation before Royal Crown filed its action in this court and now they are terminated" (*id.* at A37). The court subsequently entered a separate opinion quantifying the amount of fees and costs to be awarded against each defendant. Without calculating a lodestar amount, or engaging in an analysis that could lead to a lodestar figure, the court concluded (Pet. App. A52) that Royal Crown was entitled to recover fees and costs of suit aggregating $1,359,374 for a lawsuit that was superfluous from the moment it was filed until it became moot and was dismissed; a lawsuit that, with respect to PepsiCo, lasted less than one week, and, with respect to Coca-Cola and Dr Pepper, was stayed for all but two weeks of its existence.

4. The United States Court of Appeals for the Eleventh Circuit unanimously reversed (Pet. App. A1-A30). The court held that Royal Crown had failed to meet its burden of proving that its litigation was "a substantial factor or catalyst in motivating the [respondents'] to abandon their transactions" (*id.* at A12). The court relied on the settled principle that in the absence of any relief on the merits, a plaintiff may still be entitled to a statutory award of attorney's fees if it can show that the lawsuit "was a causal link prompting some remedial action" (*id.* at A13). Relying on the Fifth Circuit's decision in *Posada v. Lamb County*, 716 F.2d 1066, 1072 (5th Cir. 1983), the court explained that causation is established "by evidence that the lawsuit was a substantial factor or a significant catalyst in motivating" de-

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neys of the [respondents] on the issue of causation; it did not offer any documents or other material on the causation issue; and it did not respond to the [respondents'] affidavits" (Pet. App. A14).

fendants' behavior (Pet. App. A13). Here, as the court noted, the record showed that Royal Crown failed to submit any evidence on the issue whether its lawsuit caused or was a catalyst for the abandonment of the transactions (*id.* at A16).

In assessing the "intensely factual" question of causation, the court considered "all of the surrounding circumstances" (Pet. App. A17). The court held that "the totality of the circumstances surrounding the proposed acquisitions does not support the district court's findings regarding the role of the Royal Crown litigation in the failure of the acquisitions" (*id.* at A18). In reaching this conclusion, the court of appeals emphasized that the lawsuit provided no substantive or controlling relief to Royal Crown, that the TRO was wholly redundant and "did not forbid the parties from doing anything that they could have otherwise done" (Pet. App. A19), and that Royal Crown had itself elected "to postpone litigation and 'to maintain trial readiness'" for some four or five months" while pursuing its lobbying efforts at the FTC (*id.* at A23).

Rejecting Royal Crown's effort to rely on "speculation and argument," rather than evidence, the court of appeals held that on the facts of this case, Royal Crown failed to satisfy its burden of proving its entitlement to an award of attorney's fees. (Pet. App. A28-A29).[3]

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[3] In light of its holding, the court of appeals had no occasion to address respondents' additional grounds for reversal, including the district court's failure to employ lodestar analysis, the excessiveness of the award as a matter of law, the error in certain components of the fee award, and Dr Pepper's contention that as the target of a proposed acquisition, it could not be held liable for a violation of Section 7 and, therefore, should not be liable for an award of fees. *See* Pet. App. A11-A12.

ARGUMENT

The decision below is correct and presents no issue that warrants review by this Court. The Eleventh Circuit applied settled principles of law to the particular facts of this case, and reached a plainly correct result that does not conflict with any decision of this Court or of any other court of appeals.

The opinion of the Eleventh Circuit stands for the wholly unexceptional proposition that where a plaintiff who has obtained neither judicial relief on the merits nor a settlement of its lawsuit, seeks a statutory award of fees based on a voluntary change in defendants' conduct, the plaintiff must show that its lawsuit was a causal link prompting such remedial action (Pet. App. A12). Petitioner does not challenge the legal standard actually enunciated and applied by the Eleventh Circuit; rather, petitioner disputes only the result that obtains from the application of that standard to a factual record in which petitioner made no submission of evidence to satisfy its burden of proof. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (reciting well-settled principle that the party seeking an award of fees "bears the burden of establishing entitlement to an award"); *Blum v. Stetson*, 465 U.S. 886, 898 (1984) (same).

1. Petitioner misreads the decision below. Consequently, the questions stated in the petition are not properly presented on the record in this case.

In petitioner's view, the court of appeals "demanded that a private plaintiff show that it was more than just a 'substantial factor' or 'catalyst' . . . in motivating defendants to abandon their Transactions" (Pet. 9). This contention is without merit. The court of appeals repeatedly recited that a plaintiff who receives no relief on the merits may nonetheless be deemed to be a substantially prevailing party under Section 16 of the Clayton Act, if it can show that the lawsuit "was a signifi-

cant factor or a significant catalyst" (Pet. App. A13). *See id.* at A14 (Royal Crown may be a prevailing party "if it establishes that its litigation was a substantial factor in causing the abandonment of the acquisitions"); *ibid.* ("Royal Crown must only prove that its litigation was itself a substantial cause in bringing about the [respondents'] decisions to abort the challenged transactions").

Similarly, there is no merit to Royal Crown's contention that the court of appeals "refus[ed] to apply the 'chronology and circumstances' test" to this case (Pet. 11). The court of appeals applied precisely the test Royal Crown advocates. The court repeatedly emphasized that in assessing causation it "must look to the totality of the circumstances" (Pet. App. A16), that it "must evaluate the chronology of events in the context of the role that the Royal Crown litigation played in the abandonment of the acquisition" (*id.* at A17-A18), and that its holding is grounded in "the chronology of events viewed in the context of the surrounding circumstances" (*id.* at A29).

As the court of appeals stated, the record in this case establishes that Royal Crown, bereft of any evidence to show causation, relied exclusively on a truncated chronology that ignored the full factual context in which the role of the lawsuit must be assessed. The district court awarded fees to Royal Crown based on the simplistic and incorrect proposition that fees could be awarded merely because "the proposed acquisitions were moving forward toward imminent consummation before Royal Crown filed its action in this Court and now they are terminated" (Pet. App. A37).[4] The court of appeals rejected this *post hoc ergo propter hoc* fallacy (*id.* at A17), correctly

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[4] Of course, the transactions were not "moving forward" at all, but were statutorily barred from consummation by the extended Hart-Scott-Rodino waiting period.

holding that a court must include "all of the surrounding circumstances in its causation determination" (*ibid.*).

Nor is there any foundation for petitioner's contention (Pet. 8, 9, 10, 17) that the court of appeals imposed a "virtually impossible" evidentiary burden or higher legal standard on petitioner simply because of the contemporaneous FTC action. The court expressly stated that "the fact that the FTC also challenged the [respondents'] transactions is not fatal" to the fee petition because "Royal Crown need not establish that its litigation was the sole cause of the [respondents'] ultimate actions" (Pet. App. A14). The FTC vote and litigation were simply part of the totality of circumstances to be considered.[5]

There is similarly no basis in the opinion below for Royal Crown's contention that the court required a plaintiff to show that "its litigation in comparison to that of the Government, was both necessary and the controlling relief." In its assessment of the totality of circumstances, the court simply found that the litigation was inconsequential and that the district court was clearly erroneous

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[5] In discussing the reasons why Royal Crown's litigation was redundant and inconsequential in light of the FTC action, the court explained that in order to obtain an injunction the Commission, unlike a private plaintiff, does not have to establish standing and antitrust injury; rather, the Commission need only show a likelihood of success on the merits and that the public equities justify such relief (Pet. App. A21). In this Section 7 case brought by a competitor, Royal Crown had substantial hurdles to overcome in establishing standing and antitrust injury. *See, e.g., Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104 (1986); *Phototron Corp. v. Eastman Kodak Co.*, 842 F.2d 95 (5th Cir.), *cert. denied*, 486 U.S. 1023 (1988). The FTC posed a greater threat to the acquisitions than did Royal Crown's litigation for the further reason that the Commission had almost six months to prepare its case during which it took discovery of the parties and numerous third parties and collected millions of documents. The FTC also had substantial economic resources at its disposal.

in finding that its TRO was the controlling relief (Pet. App. A18-A26).[6]

Finally, there is no merit to Royal Crown's contention (Pet. 21-22) that the court of appeals fashioned a rule requiring direct evidence of a defendant's subjective motivation. The court of appeals did no such thing. The court expressly acknowledged that in some cases a plaintiff seeking a fee award "may be both sufficient and justified" in relying solely on the chronology of events (Pet. App. A14-A15). It is only where, as on the particular factual record in this case, a plaintiff "never received relief on the merits and . . . other events completely obscure any inference to be drawn from the chronology of events, we believe something more is needed" (*id.* at A15). Again, the decision below turns on Royal Crown's total failure of proof on a factual issue for which it bore the burden. The court did not, as Royal Crown contends (Pet. 23), require an evidentiary hearing in every case nor did it require "the submission of admissions as a condition of receiving a fee award." Rather, the Eleventh Circuit recognized in this case, as it has in others (*e.g.*, *Norman v. Housing Auth.*, 836 F.2d 1292, 1303 (11th Cir. 1988), that an evidentiary hearing is not an essential predicate to a fee award where a plaintiff can otherwise satisfy its burden of proving its entitlement to recover attorney's fees.

2. Royal Crown's mischaracterizations of the decision below expose the error of its attempt to conjure up a conflict among the circuits. The "substantial factor or catalyst" standard employed by the Eleventh Circuit conforms to the standard applied by other courts of appeals in determining whether a plaintiff who has obtained no final adjudication in its favor and has obtained no judi-

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[6] *See also North Carolina Dep't of Transp. v. Crest St. Community Council, Inc.*, 479 U.S. 6, 14 (fee awards are reasonably limited "to those parties who, in order to obtain relief, found it necessary to file a complaint in court").

cial relief on the merits may be entitled to an award of fees as a substantially prevailing party. *See Braafladt v. Board of Governors*, 778 F.2d 1442, 1444 (9th Cir. 1985) ("The lawsuit must be a catalyst motivating the defendant to provide the relief sought"); *Loudermill v. Cleveland Bd. of Educ.*, 844 F.2d 304, 312-13 (6th Cir.), *cert. denied*, 109 S. Ct. 377 (1988) ("catalyst which causes the defendant to make significant changes"); *Ortiz DeArroyo v. Barcelo*, 765 F.2d 275, 282 (1st Cir. 1985) ("lawsuit act[ed] as a 'catalyst' in prompting [the defendants to take action 'to meet the plaintiffs' claims' ") (citation omitted); *Iranian Students Ass'n v. Sawyer*, 639 F.2d 1160, 1163 (5th Cir. Unit A Mar. 1981) (whether "lawsuit was a significant catalytic factor in achieving the primary relief sought through litigation") (citation omitted); *McQuillen v. Wisconsin Educ. Ass'n Council*, 830 F.2d 659 (7th Cir. 1987), *cert. denied*, 485 U.S. 914 (1988) (plaintiff not entitled to attorney's fees as prevailing party where no causal connection existed between lawsuit and affirmative action plan); *Disabled in Action v. Pierce*, 789 F.2d 1016, 1019 (3d Cir. 1986) (lawsuit must be "material factor in prompting the defendant to afford relief"); *Sullivan v. Pennsylvania Dep't of Labor & Indus.*, 663 F.2d 443, 448 (3d Cir. 1981) (whether lawsuit "acted as a 'catalyst' for the vindication of her constitutional rights") (citation omitted), *cert. denied*, 455 U.S. 1020 (1982); *Williams v. Miller*, 620 F.2d 199, 202 (8th Cir. 1980) ("whether the suit was the 'catalyst' that brought about compliance"). *See also Hewitt v. Helms*, 482 U.S. 755, 763 (1987) (need to show "a clear causal link between [a] lawsuit" and the defendants' changed conduct).[7]

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[7] This standard has been uniformly applied by the Eleventh Circuit. *See Taylor v. City of Fort Lauderdale*, 810 F.2d 1551, 1560 (11th Cir. 1987) (quoting *Robinson v. Kimbrough*, 652 F.2d 458, 466 (5th Cir. Aug. 1981)); *Doe v. Busbee*, 684 F.2d 1375, 1380 (11th Cir. 1982); *Maloney v. City of Marietta*, 822 F.2d 1023 (11th Cir. 1987).

Royal Crown's contention (Pet. 12-13) that the decision below is in conflict with the Fifth Circuit is flatly wrong. The case on which Royal Crown relies, *United States v. Terminal Transport Co.*, 653 F.2d 1016 (5th Cir. Unit B Aug. 1981), *cert. denied*, 455 U.S. 989 (1982), was expressly distinguished on its facts in the opinion below (Pet. App. A26-A27). Indeed, the panel in this case was peculiarly well-suited to comment on the differences between the cases, since two members of the panel below (including the author of the court's opinion) also sat on the panel in *Terminal Transport*. In any event, the long line of more recent Fifth Circuit cases employing the same standard as the opinion in this case dispels any possibility of a conflict. *E.g.*, *Iranian Students; Posada; Leroy v. City of Houston*, 831 F.2d 576, 579-81 (5th Cir. 1987), *cert. denied*, 486 U.S. 1088 (1988). *See also Coen v. Harrison County School Bd.*, 638 F.2d 24, 26 (5th Cir. Unit A. Feb. 1981) (lawsuit must be "if not the sole reason for [plaintiff's] success, at least a major factor in bringing it about" because "[a] civil rights plaintiff may not collect attorney's fees for demanding that a state officer do what he would have done in any case"), *cert. denied*, 455 U.S. 938 (1982).

Royal Crown's other claims of conflict (Pet. 14-16) are equally far-fetched. In *Nadeau v. Helgemoe*, 581 F.2d 275 (1st Cir. 1978), the court stated that entitlement to a fee award requires a showing that plaintiff's lawsuit was a catalyst in prompting defendants' remedial action. *Id.* at 279. The court in *Nadeau* also cautioned that chronology was "clearly not [the] definitive factor" on the catalyst issue (*id.* at 281), and observed that a fee award is not justified if the lawsuit was "completely superfluous" (*ibid.*). These views are clearly echoed in the opinion below (*e.g.*, Pet. App. A17, A19, A21), where Royal Crown's lawsuit was indeed superfluous. In entering the TRO, the district court explicitly stated that it was not ruling on the merits (R4-22-75). Since the TRO was entered during the Hart-Scott-Rodino waiting period

when the respondents were already precluded from consummating the transactions, the court of appeals correctly noted that the TRO "did not forbid the parties from doing anything they could have otherwise done" (Pet. App. A19). Consistent with the analysis in *Nadeau*, the court below concluded that a "plaintiff may not collect attorneys' fees for demanding of the defendant that which the defendant would have done in any case" (*id.* at A21-A22).

There is similarly no merit to Royal Crown's contention of a conflict with the Third Circuit (Pet. 15-16). The cited Third Circuit cases [8] employed the "catalyst" standard applied by the Eleventh Circuit; the result in each case turned on the application of that standard to the factual record. For example, unlike Royal Crown's total absence of proof, the plaintiffs in *Morrison v. Ayoob* presented evidence on causation. 627 F.2d at 672. In any event, Third Circuit cases not cited by Royal Crown show plainly that the catalyst test is controlling in that court; each case turns on whether causation is established as a factual matter. *E.g., Disabled in Action v. Pierce*, 789 F.2d at 1019; *Sullivan v. Pennsylvania Dep't of Labor*, 663 F.2d at 448-49, 451.

In short, there is no basis for Royal Crown's argument (Pet. 16) that a conflict exists between the decision below and "the broad reading of this statute" by other courts of appeals. None of the cited cases conflict in their holdings or governing legal principles; indeed, none of the allegedly conflicting cases even arose under Section 16 of the Clayton Act.

3. Finally, there is no merit to Royal Crown's contention (Pet. 25-28) that this Court should grant review to

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[8] *NAACP v. Wilmington Medical Center, Inc.*, 689 F.2d 1161 (3d Cir. 1980), *cert. denied*, 460 U.S. 1052 (1983); *Morrison v. Ayoob*, 627 F.2d 669 (3d Cir. 1980), *cert. denied*, 449 U.S. 1102 (1981).

consider whether the court of appeals should have remanded the case for further proceedings.

Royal Crown's argument is founded on the false premise that the court of appeals erected a previously unknown legal standard. As discussed above, this is a misreading of the opinion below. The court of appeals applied a well-established, unexceptional standard to the particular facts of this case.

Royal Crown is also incorrect in arguing that the court of appeals "simply drew different inferences from the same set of facts" (Pet. 27). Rather, as the court explicitly set forth, it subjected the district court's findings of fact to the appropriate "clearly erroneous" standard of review (*see* Pet. App. A11, A18), and concluded that "[i]n light of the chronology of events viewed in the context of the surrounding circumstances, we are left with a 'definite and firm conviction' that the District Court made a mistake in finding that the Royal Crown litigation played a significant role in the abandonment of the acquisitions." *Id.* at A29, quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

Where petitioner, despite a full and fair opportunity, offered no evidence to satisfy its burden of proof, there is no occasion for this Court to review the court of appeals' well-considered judgment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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